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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re EVA J., a Person Coming Under the
Juvenile Court Law.

B269594

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. DK09233)

Plaintiff and Respondent,

v.

DALE S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Teresa Sullivan, Judge. Affirmed.

Law Offices of Vincent W. Davis & Associates and Stephanie M. Davis, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

Dale S., mother, appeals from a juvenile court order terminating dependency jurisdiction over her four-year-old daughter, Eva J., and awarding father sole physical custody. Mother contends the juvenile court abused its discretion by failing to award the parents joint physical custody because the evidence established the conditions necessitating dependency jurisdiction no longer existed. We find no abuse of discretion and affirm the juvenile court order.

FACTUAL AND PROCEDURAL BACKGROUND

Eva came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) in December 2014, following an altercation between mother and Eva's babysitter that occurred when mother was picking Eva up from the babysitter's house. According to the babysitter, mother did not buckle then three-year-old Eva into her car seat. Mother had in the past also failed to strap Eva into the car seat. When the babysitter insisted mother buckle Eva in before driving away, mother retorted the babysitter should not tell her what to do. While the babysitter was still holding the open driver's side door, mother began to drive away. Neighborhood children were playing in the path of mother's car; the babysitter had to yell to warn them to move away. Mother nearly hit the children with her car. Mother finally stopped the car at the end of the block. The babysitter let go of the door and informed mother she would call the police. Mother responded, "I don't give a fuck about [Eva's] life, my life or your life." Mother was arrested. According to a police report, during the booking process an officer noticed mother had scars on her wrists. Mother told police she had attempted suicide six months earlier. She also said she wanted to harm herself. She explained she cut herself because " 'it is the only pain she can control.' "

A few days later, father secured a temporary emergency order from the family law court granting him custody of Eva and ordering that mother was to have no visitation.¹ However, in early January 2015, while father was at work and the maternal great-

¹ Before the incident with the babysitter, the parents informally shared custody of Eva.

grandparents were taking care of Eva, mother arrived at their house and tried to take Eva away. When the great-grandparents refused, stating the court orders said mother was not to take Eva, mother engaged in a physical altercation with them, biting the great-grandfather and hitting the great-grandmother. Eva was present and crying. The great-grandparents called the police. When mother was unable to take Eva away, she said, in front of Eva, “I did not want the damn baby anyway.”

The babysitter and the great-grandparents suspected mother was using marijuana, and possibly other drugs, as she had recently lost a lot of weight very quickly. The babysitter also said mother had been behaving erratically. Father informed DCFS mother used cocaine and had once left cocaine in a candy container near Eva’s crib. Father indicated he had more than once caught mother smoking marijuana in Eva’s presence. The babysitter also told DCFS she knew mother smoked marijuana with Eva in the car. Mother admitted she smoked marijuana; she also admitted she used to cut herself in high school.²

In February 2015, mother pled no contest to a dependency petition alleging her altercation with the babysitter in December 2014, her altercation with the great-grandparents, and her marijuana abuse all placed Eva at risk of serious physical harm. The juvenile court found Eva to be a person described by Welfare and Institutions Code section 300, subdivision (b),³ removed her from mother, and placed her with father.

In the months that followed, Eva thrived in father’s care. Mother visited Eva weekly without incident. However, by August 2015, mother had failed to respond to the DCFS social worker’s multiple attempts to contact her. Mother also had not signed a release allowing her therapist to communicate with DCFS about her progress. In September 2015, mother’s therapist indicated by letter that mother had completed 20 counseling sessions, the recommended number.

² Mother was 22 years old when the proceedings began; father was 23 years old.

³ All further statutory references are to the Welfare and Institutions Code.

At a December 10, 2015 section 364 hearing, DCFS recommended dependency jurisdiction be terminated, with an order awarding the parents joint legal custody, physical custody to father only, and unmonitored visits for mother.⁴ Counsel for mother and father requested that the court award the parents joint physical custody. Eva's counsel objected, arguing it did not appear mother had fully complied with the case plan, which required drug testing and a parenting class. Mother's counsel represented that mother had completed a parenting class and complied with drug testing at the beginning of the case. The court accepted the DCFS recommendation and terminated dependency jurisdiction, concluding the circumstances justifying the assumption of jurisdiction no longer existed and were not likely to exist if the case was closed. The court awarded physical custody to father and joint legal custody to the parents, with mother to have unmonitored visits. Mother's appeal followed.

DISCUSSION

The Juvenile Court Did Not Abuse its Discretion in Awarding Father Sole Physical Custody

Mother contends the juvenile court abused its discretion in failing to return the parents' custody arrangement to the way it was before dependency jurisdiction was asserted. We find no error.

When a juvenile court terminates jurisdiction over a dependent child, it may make orders regarding custody and visitation that become part of any family court proceeding concerning the same child. (*In re T.H.* (2010) 190 Cal.App.4th 1119, 1122-1123.) We review "the juvenile court's decision to terminate dependency jurisdiction and to issue a custody (or 'exit') order pursuant to section 362.4 for abuse of discretion

⁴ We note the minute order from the jurisdiction hearing indicates Eva was placed with father pursuant to section 361.2. When a child is removed from one parent and placed in the physical custody of the other, "noncustodial" parent, subsequent review hearings proceed under section 366.21, subdivision (e), rather than section 364. (*In re Maya L.* (2014) 232 Cal.App.4th 81, 98-99.) However, the parties do not contend the trial court erred in proceeding under section 364. Further, even if invoking section 364 was incorrect, any error would be harmless given the similarity in the standards under the statutes. (*Maya L.*, at p. 101; *In re Janee W.* (2006) 140 Cal.App.4th 1444, 1452.)

[citation] and may not disturb the order unless the court “ ‘exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].’ ” [Citations.]” (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.)

“ ‘When making a custody determination in any dependency case, the court’s focus and primary consideration must always be the best interests of the child. [Citations.] Furthermore, the court is not restrained by “any preferences or presumptions.” [Citation.] Thus, for example, a finding that neither parent poses any danger to the child does not mean that both are equally entitled to half custody, since joint physical custody may not be in the child’s best interests for a variety of reasons. [Citation.]’ [Citation.]” (*In re Maya L.*, *supra*, 232 Cal.App.4th at pp. 102-103.)

Here, there was evidence to support the juvenile court conclusion that awarding father sole physical custody would be in Eva’s best interests. Dependency proceedings were necessary because of mother’s behavior which threatened Eva’s physical safety and those of the people caring for her. Mother also pleaded no contest to allegations that her drug use placed Eva at risk of harm. However, the record did not include evidence that mother complied with the portion of the case plan requiring her to submit to random drug testing and complete a parenting class. Further, while mother had completed 20 sessions of therapy, the issues that precipitated the dependency proceedings were significant. They included mother’s statements to others that she did not care about her life or Eva’s, her reckless behavior that endangered Eva, and her admission to police that she had attempted suicide six months earlier. While mother’s visits had gone well, there was no evidence demonstrating mother could safely have Eva in her custody for longer durations. Mother had only had monitored visits with Eva by the December 2015 hearing.

The juvenile court could reasonably conclude Eva was not at risk of harm in father’s care, and, contingent on Eva remaining primarily in father’s physical custody, the court could further reasonably conclude termination of dependency jurisdiction was appropriate. (*In re Jennifer R.* (1993) 14 Cal.App.4th 704, 713 [court’s order terminating

jurisdiction and awarding father sole legal and physical custody was not a finding there would be no protective issues if mother had joint custody; court's determination there were no protective issues was premised upon the existence of the custody and visitation order].) Mother argues on appeal that father's agreement to shared custody and the maternal great-grandparents' willingness to monitor visits in their home was "significant evidence" that allowing mother joint physical custody would be in Eva's best interests. Yet, mother ignores that Eva's counsel, whose role was to advocate only for Eva's interests, *objected* to the parents having joint physical custody. We also disagree that the court's ruling terminating jurisdiction and allowing mother unmonitored visits created an inference that mother posed no risk to Eva. The court's order indicates it determined continued supervision was no longer necessary, so long as father had primary physical custody of Eva. (*In re Jennifer R.*, *supra*, 14 Cal.App.4th at p. 713.) We can find no abuse of discretion in this conclusion. Should circumstances change in the future, mother is free to seek a change in the custody order in the family law court. (*Id.* at p. 714.)

DISPOSITION

The juvenile court order is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.